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UNITED STATES DISTRICT COURT

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SOUTHERN DISTRICT OF OHIO

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WESTERN DIVISION

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THE KROGER CO., )  
6 )  
Plaintiff, ) Case No.  
7 )  
vs. ) 0-1-02 439  
8 )  
MALEASE FOODS CORP., formerly )  
9 known as MALESE FOODS CORP., )  
10 )  
Defendant. )  
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DEPOSITION OF LAWRENCE KADISH

15

Old Westbury, New York

16

Wednesday, January 21, 2004

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Reported by:

KRISTIN KOCH, RPR

25

JOB NO. 731



<p>1 Kadish</p> <p>2 lease. I had no way of knowing that, nor was I</p> <p>3 concerned about it.</p> <p>4 <b>Q. So the thought of getting a premium</b></p> <p>5 <b>from Kroger so they could convey clean title to</b></p> <p>6 <b>Butt --</b></p> <p>7 A. I don't know what you mean by a</p> <p>8 "premium." Could you say that question a little</p> <p>9 clearer?</p> <p>10 <b>Q. Sure. The thought of you being</b></p> <p>11 <b>compensated in order to allow Kroger to convey</b></p> <p>12 <b>clean title to Butt, that never came into your</b></p> <p>13 <b>thought processes; correct?</b></p> <p>14 A. Correct.</p> <p>15 <b>Q. I think this is clear, but I just</b></p> <p>16 <b>want to clarify for the record, and I understand</b></p> <p>17 <b>from your counsel that you are still</b></p> <p>18 <b>investigating looking into this. Do you know by</b></p> <p>19 <b>name anyone from Kroger that did anything</b></p> <p>20 <b>improper, either with Mr. Price or someone from</b></p> <p>21 <b>Merrill Lynch, that adversely affected your</b></p> <p>22 <b>interest?</b></p> <p>23 A. It appears to me that the party that</p> <p>24 signed -- what is that, Exhibit 2?</p> <p>25 MR. CINQUE: Are you talking about</p>	<p>1 Kadish</p> <p>2 these letters that we marked.</p> <p>3 A. (Continuing) James E. Hodge.</p> <p>4 <b>Q. Do you know Mr. Hodge?</b></p> <p>5 A. No.</p> <p>6 <b>Q. Do you know what, if any,</b></p> <p>7 <b>conversations or interaction he was having with</b></p> <p>8 <b>Mr. Price or anyone else from Merrill Lynch</b></p> <p>9 <b>separate and apart from the fact that his name</b></p> <p>10 <b>is on that letter?</b></p> <p>11 A. I don't remember. The only memory of</p> <p>12 anybody that I -- other than looking at this</p> <p>13 letter and this letter signed by Waldvogel, the</p> <p>14 only name that I remember at Kroger was Keller,</p> <p>15 who used to work there years ago and then worked</p> <p>16 for K-Mart and then retired. He was the head of</p> <p>17 the real estate department, and I didn't know</p> <p>18 him until he worked for K-Mart, but I don't</p> <p>19 remember any names at Kroger.</p> <p>20 <b>Q. And, again, just so it is clear,</b></p> <p>21 <b>other than the two names that appear on Exhibits</b></p> <p>22 <b>1 and 2, you don't have any other information or</b></p> <p>23 <b>knowledge at this point in time as to anything</b></p> <p>24 <b>that any individual person from Kroger did or</b></p> <p>25 <b>should have done; is that fair?</b></p>
<p>1 Kadish</p> <p>2 MR. CINQUE: Just to make it clear,</p> <p>3 we haven't deposed Kroger yet.</p> <p>4 MR. PHILLIPS: You have made that</p> <p>5 crystal clear.</p> <p>6 A. As of today, no.</p> <p>7 (Kadish Exhibit 7, Complaint for</p> <p>8 Declaratory Judgement, Injunction, and</p> <p>9 Breach of Contract, marked for</p> <p>10 identification.)</p> <p>11 Q. Mr. Kadish, I have handed you Exhibit</p> <p>12 7, which is a copy of the Complaint that we</p> <p>13 filed in this action. I am not going to ask you</p> <p>14 any questions about the Complaint. I am really</p> <p>15 interested in the letters that are attached,</p> <p>16 Exhibits 1 through 3 towards the end. Do you</p> <p>17 see those? There is a letter from Kroger dated</p> <p>18 February 18, 2002. Do you have that document in</p> <p>19 front of you, sir?</p> <p>20 A. Yes.</p> <p>21 Q. This is a letter dated February 18,</p> <p>22 2002, to, among others, yourself, and other</p> <p>23 parties, and it's sent by James Hodge, vice</p> <p>24 president of Kroger; is that correct?</p> <p>25 A. Yes.</p>	<p>1 Kadish</p> <p>2 <b>Q. Do you recall receiving this document</b></p> <p>3 <b>or this letter on or about February 18, 2002?</b></p> <p>4 A. Well, it says "certified mail," so I</p> <p>5 must have received it.</p> <p>6 <b>Q. This is Kroger's attempt to exercise</b></p> <p>7 <b>the purchase option, Article 35, of the April</b></p> <p>8 <b>1983 lease; correct?</b></p> <p>9 A. Yes.</p> <p>10 Q. Then if you turn to the next letter,</p> <p>11 it is a letter dated March 14, 2002, and this is</p> <p>12 a letter that you sent to Kroger on or about</p> <p>13 March 14, 2002; is that correct?</p> <p>14 A. Yes.</p> <p>15 Q. I notice in this letter, if you want</p> <p>16 to review it, take all the time you need, but I</p> <p>17 notice in this letter there is nothing in here</p> <p>18 about -- there is no objection to Kroger</p> <p>19 improperly taking out Merrill Lynch's position</p> <p>20 is that correct?</p> <p>21 MR. CINQUE: Objection to the form.</p> <p>22 Look at the third paragraph. That's not</p> <p>23 fair.</p> <p>24 MR. PHILLIPS: I agree with your</p> <p>25 counsel. Let me rephrase the question.</p>